BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76LJ 30112899 BY Chautauqua Terrace Homeowners' Association	**)** **)** **)**	**PRELIMINARY DETERMINATION TO GRANT PERMIT**

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On November 30, 2017, Chautauqua Terrace Homeowners' Association (Applicant) submitted Application for Beneficial Water Use Permit No. 76LJ 30112899 to the Kalispell Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 80 gallons per minute (GPM) up to 45.5 acre-feet (AF) diverted volume for multiple domestic and lawn & garden irrigation use within the Chautauqua Terrace Subdivision. The Department published receipt of the Application on its website. The Application was determined to be correct and complete as of April 13, 2018. An Environmental Assessment for this Application was completed on April 16, 2018.

INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600
- Attachments
- Aerial map showing subdivision location
- Subdivision map showing layout of lots and waterlines
- Electronic copy of Form 633

Information Received after Application Filed

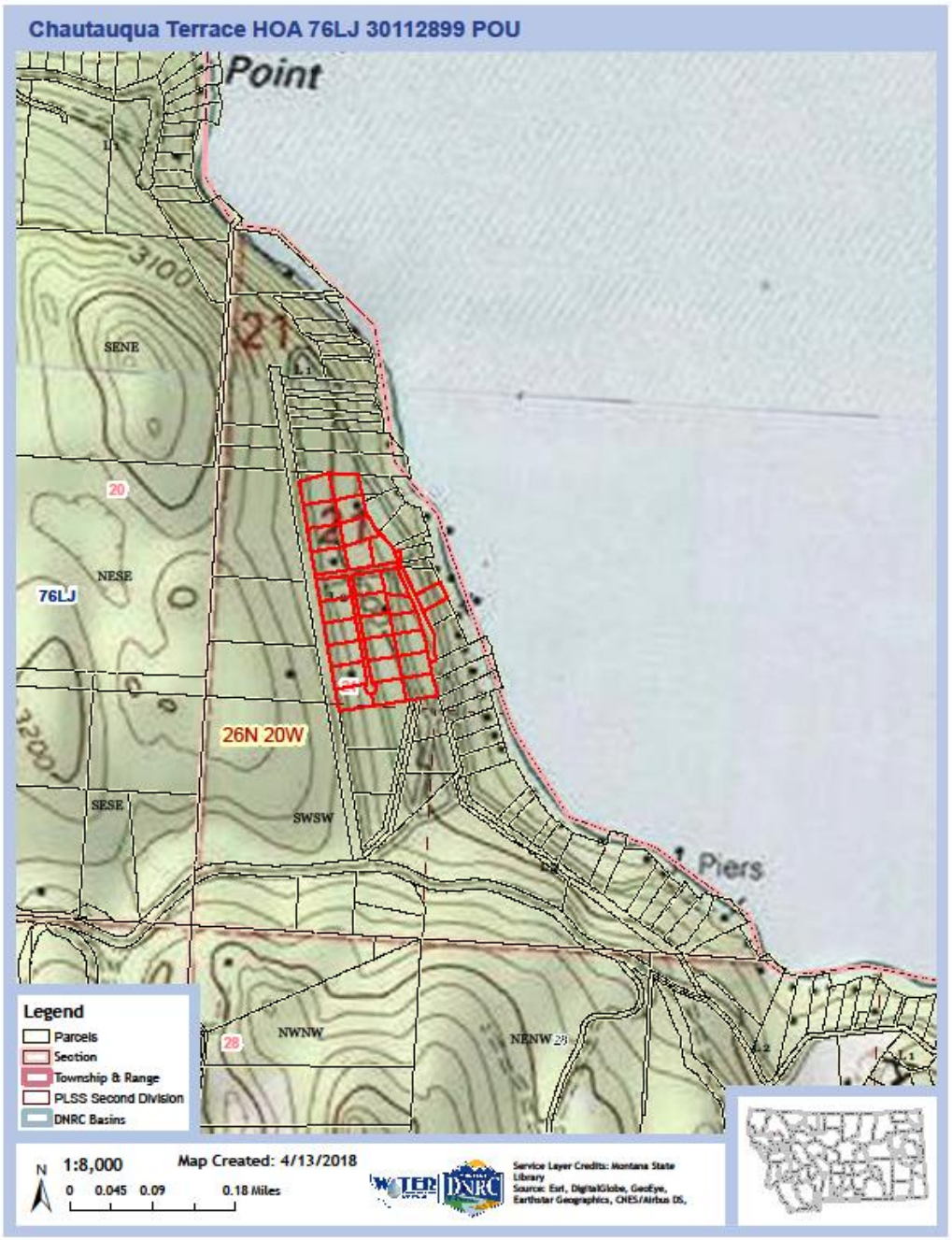
- Original copy of application signature page with signatory title, received February 5, 2018

- Supplemental water rights explanation explaining amended Statement of Claim 76LJ 8314-00, received April 5, 2018

Information within the Department's Possession/Knowledge

- Aquifer Test Report by DNRC groundwater Hydrologist Attila Folnagy, dated January 31, 2018
- Depletion Report by DNRC groundwater Hydrologist Attila Folnagy, dated January 30, 2018
- Department record of existing water rights
- USGS records for gaging station #12372000, Flathead River near Polson

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).



PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water from a 291-foot-deep well for multiple domestic use in 28 homes and lawn & garden irrigation of 7 acres on 28 lots in the Chautauqua Terrace subdivision. The well is completed in a confined fractured bedrock aquifer of the Pre-Cambrian Belt Supergroup. The proposed point of diversion is located in the NWNWSW Section 21, Township 26N, Range 20W, Flathead County. The proposed period of diversion is January 1-December 31. The proposed period of use for multiple domestic use is January 1-December 31, and the proposed period of use for lawn & garden irrigation is April 15-October 15. The place of use is Lots 1 through 27, and lot 1-HA, all of which are all located within the Chautauqua Terrace Subdivision in the NWSW Section 21, Township 26N, Range 20W, Flathead County.

2. The total proposed appropriation is for 80 GPM diverted flow up to 45.5 AF diverted volume per annum. The requested flow rate is based on the well pumping at full capacity using the existing pump. The total consumptive use of the proposed appropriation for the purpose of analyzing adverse effect is calculated to be 13.3 AF per annum.

3. There are two existing water rights which serve two lots within the Chautauqua Terrace water system. These two lots which have existing water rights are not included in this permit application. Statement of Claim 76LJ 8413-00 is for two domestic uses on lot 1-H. These two domestic uses are the only connections on the water system that were in existence prior to July 1, 1973. Provisional Permit 76LJ 89219-00 covers lot 1-O, which has been annexed into the Chautauqua Terrace subdivision and is recorded with the county as such. This water right was certified for two additional connections. However, according to the Applicant, these lots were never provided water services by the Chautauqua Terrace water system; each of these lots has an individual well.

4. The application will be subject to the following conditions, limitations or restrictions.

WATER USE MEASUREMENT

FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS

SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE KALISPELL WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

§ 85-2-311, MCA, BENEFICIAL WATER USE PERMIT CRITERIA

GENERAL CONCLUSIONS OF LAW

5. The Montana Constitution expressly recognizes in relevant part that:

> (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
> (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
> (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, §3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

> (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .
> (3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

6. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment,

withdrawal, or related distribution works except by applying for and receiving a permit from the Department. See § 85-2-102(1), MCA. An applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant part:

> … the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:
>
> (a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and
>
> (ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:
>
> (A) identification of physical water availability;
>
> (B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
>
> (C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.
>
> (b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;
>
> (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
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> (d) the proposed use of water is a beneficial use;
>
> (e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;
>
> (f) the water quality of a prior appropriator will not be adversely affected;
>
> (g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and
>
> (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.
>
> (2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial

> credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, "the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies." § 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the applicant by a preponderance of the evidence. Id. A preponderance of evidence is "more probably than not." Hohenlohe v. DNRC, 2010 MT 203, ¶¶33, 35.

7. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

> (1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, "uncontrolled development of a valuable natural resource" which "contradicts the spirit and purpose underlying the Water Use Act."); see also, *In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara*

L. Sowers (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); *In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick* (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

8. The Montana Supreme Court further recognized in Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starner (1996), 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080, *superseded by legislation on another issue*:

> Nothing in that section [85-2-313], however, relieves an applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order* (2011). The Supreme Court likewise explained that:

> .... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; see also Mont. Const. art. IX §3(1).

9. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. § 85-2-311(6), MCA.

10. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

Physical Availability

FINDINGS OF FACT

11. The Applicant is proposing to divert water from a well for multiple domestic and lawn & garden irrigation uses. The well is completed in a confined fractured bedrock aquifer of the Pre-Cambrian Belt Supergroup. A series of normal faults with a north-northwest orientation and their related fractures provide conduits for groundwater flow. The top of the aquifer is approximately 250 feet below ground surface (bgs) based on available well logs.

12. The Applicant was granted a variance from the aquifer testing requirement under the Administrative Rules of Montana (ARM) 36.12.121 that requires one or more observation well to be completed in the same source aquifer. They were also given a variance from the testing requirement under ARM 36.12.121 that requires groundwater levels in the production well and observation well(s) must be monitored at frequent intervals for at least two days prior to the beginning of the aquifer test to evaluate background water-level trends.

13. A 24-hour aquifer test was conducted on the proposed well from September 19, 2017, at 8:25 A.M, to 8:25 A.M. on September 20, 2017, at an average flow rate of 80 GPM. The discharge was measured using a Sensus Omni totalizing flow meter. The maximum drawdown in the pumping well was 10 feet below the static water level of 128.8 feet bgs.

14. An Aquifer Test Report and Depletion Report were completed by DNRC Groundwater Hydrologist Attila Folnagy on January 31, 2018, and January 30, 2018, respectively. The recommended aquifer transmissivity of 16,740 ft^2/day was generated by matching the Cooper-Jacob (1946) solution to the drawdown data for the pumping well. Based on the data for given wells completed in the fractured bedrock aquifer, the most representative storativity was determined to be 0.0008.

15. Drawdown in the proposed well for the period of diversion is calculated by the sum of aquifer drawdown modeled for an assumed monthly pumping schedule (Table 1) and drawdown from daily pumping based on aquifer testing. The monthly pumping schedule is obtained by evenly distributing the requested domestic volume throughout the entire year and apportioning the requested irrigation volume based on the net irrigation requirement from the Bigfork station in the Irrigation Water Requirement (IWR) program (NRCS, 2003). The aquifer directly adjacent to the proposed well will experience the largest drawdown of 0.7 feet at the end of July. The total maximum drawdown of 10.7 feet for the proposed well is the sum of the modeled aquifer drawdown (0.7 feet) and the drawdown (10 feet) at 945 minutes (time it takes to pump July's daily volume of 75,600 gallons) into the 24-hour aquifer test. This would leave 151.5 feet of available drawdown above the open bottom of the proposed well.

16. An evaluation of physical groundwater availability for evaluating legal availability was done by calculating groundwater flux through a zone of influence (ZOI) corresponding to the 0.01-foot drawdown contour. Using the Theis (1935) solution, a constant pumping rate of 28.2 GPM for the period of diversion, T = 16,740 ft^2/day, and S = 0.0008 generated a distance-drawdown plot. The 0.01-foot drawdown contour occurs at 1,300 feet from the proposed well. The groundwater gradient for the fractured bedrock aquifer is estimated from static water levels from well logs.

17. The calculation for groundwater flux (Q) through the delineated area is given by the equation Q=Twi:

- T = Transmissivity = 16,740 ft^2/day
- W = Width of Zone of Influence = 2,600 ft
- i = Groundwater gradient (from estimated groundwater elevations) = 0.03 ft/ft.

The flux calculated for the zone of influence is equal to 1,305,720 ft^3/day or 10,941 AF/year.

CONCLUSIONS OF LAW

18. Pursuant to § 85-2-311(1)(a)(i), MCA, an applicant must prove by a preponderance of the evidence that "there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate."

19. It is the applicant's burden to produce the required evidence. *In the Matter of Application for Beneficial Water Use Permit No. 27665-41I by Anson* (DNRC Final Order 1987)(applicant produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

20. An applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

21. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (FOF 11-17)

Legal Availability

FINDINGS OF FACT

22. An aquifer flux of 10,941 AF was calculated for the confined bedrock aquifer the Applicant's well is completed in. To evaluate legal availability of water in the aquifer, a list of groundwater rights within the Applicant's zone of influence was compiled. A total of 10 water rights were found to have wells completed within the zone of influence (Table 2). The sum of these water rights is 21.36 AF annually.

Table 2. Existing groundwater rights within the zone of influence

Water Right #	Water Right Type	Priority Date	Volume Appropriated
76LJ 30016218	Ground Water Certificate	8/15/2005	3.4*
76LJ 84213-00	Ground Water Certificate	12/10/1992	1

76LJ 30047368	Ground Water Certificate	10/26/2009	1.03
76LJ 30047533	Ground Water Certificate	11/17/2009	1.1
76LJ 30063422	Ground Water Certificate	6/25/2012	1.33
76LJ 24733-00	Ground Water Certificate	10/10/1979	1.5
76LJ 91101-00	Ground Water Certificate	9/1/1994	1.6
76LJ 91078-00	Ground Water Certificate	8/29/1994	3.5
76LJ 89219-00	Provisional Permit	3/21/1994	4.9
76LJ 8314-00	Statement of Claim	10/26/1970	2.0

*Groundwater Certificate 76LJ 30016218 was issued without a volume for domestic use and up to 3 acres of lawn & garden. The total size of the parcel the water right is appurtenant to is 0.96 acres in size. The Department calculates that the maximum appropriation could be 3.4 AF based on one domestic use and lawn & garden irrigation of 0.96 acres.

23. The existing legal demands within the zone of influence were subtracted from the calculated aquifer flux in order to calculate legal availability of water (Table 3).

Table 3. Comparison of physical water supply and existing legal demands within the bedrock aquifer.

Physical Water Supply (AF/year)	Existing Legal Demands (AF/year)	Physically Available Water – Existing Legal Demands (AF/year)
10,941	21.36	10,919.64

24. The Department's Depletion Report identifies that the fractured bedrock aquifer that the Applicant's well is completed in is hydraulically connected to Flathead Lake. Depletion by pumping the aquifer primarily occurs through propagation of drawdown through the fractured bedrock aquifer and through or around the overlying confining unit to the affected surface water. This process was modeled using the Well Pumping Depletion Model (WPDM).

25. To determine the depletion to Flathead Lake, the Department calculates a consumptive amount for the proposed uses. For domestic use where water is disposed via drainfields, consumption is estimated at 10% of the diverted amount. The annual consumption of the proposed multiple domestic use is 2.8 AF. For lawn & garden irrigation, the Department calculates consumption using the NRCS Irrigation Water Requirement (IWR) program's calculated net irrigation requirement for pasture grass. The annual consumption for the proposed

lawn & garden irrigation of 7 acres is 10.5 AF based on the net irrigation requirement of 17.98 inches obtained from the Bigfork, Montana weather station using the IWR program. Calculated consumption and modeled monthly depletion to Flathead Lake are reported in table 4.

Table 4. Consumptive use and monthly net depletion to Flathead Lake for the proposed appropriation

Month	Consumption (AF)	Depletion (AF)	Depletion (GPM)
January	0.2	0.2	1.7
February	0.2	0.3	2.1
March	0.2	0.2	1.7
April	0.5	0.5	3.9
May	1.4	1.4	10.2
June	2.2	2.2	16.5
July	3.1	3.1	22.4
August	2.9	2.8	20.5
September	1.5	1.6	11.8
October	0.5	0.5	3.9
November	0.2	0.3	1.9
December	0.2	0.2	1.8
Total	13.3	13.3	

26. The Department will evaluate legal availability of water for surface waters identified to be depleted in the Department's Depletion Report. The following USGS gage data will be utilized to quantify monthly flows and volumes for the reach of the Flathead River consisting of Flathead Lake that will experience surface water depletions from the proposed groundwater pumping:

- Flathead River near Polson, USGS gage # 12372000; period of record (October 1938 – September 2017)

27. For the reach consisting of Flathead Lake, the Department will use the median of the mean monthly flows of USGS gage #12372000, Flathead River near Polson, and add in all

existing water uses from the gage up to the inlet of the Flathead River into Flathead Lake. This is done because for analysis of reaches where the gaging station used is below the requested POD, Department practice is to add in the flow rates and volumes of existing rights for the reach from the gage up to the proposed POD to determine physical availability. This methodology is also applicable for analysis of depletions to surface water sources. This is done to account for existing users' withdrawals on the source. A list of the existing water rights used to account for existing users' withdrawals from this reach can be found in the water right file or provided upon request.

28. When calculating the volume appropriated by existing users on the source, irrigation and lawn/garden uses were delegated as occurring from April 1st to October 31st. All other water uses were analyzed as year-round uses. Due to the difficulty of differentiating the distribution of appropriated volume over the period of diversion, it was assumed that the flow rate of each existing right is continuously diverted throughout each month of the period of diversion. This assumption leads to an overestimation of existing uses from the source. The Department finds this an appropriate measure of assessing existing rights as it protects existing water users.

29. Table 5 shows the median mean monthly flow rates and volumes used to quantify physical availability of surface water. Median of mean monthly volumes were calculated by converting CFS to Acre-Feet (CFS x 1.98 (Per DNRC form 615) x days per month =AF).

Table 5. Surface water calculated to be physically available in Flathead Lake reach of the Flathead River

	Jan	Feb	Mar	Apr	May	Jun
Flow (CFS)	10,484.7	9,285.7	7,969.7	9,622.5	19,522.5	25,892.5
Volume (AF)	643,548.9	514,797.4	489,178.2	571,574.6	1,198,289.1	1,538,012.6
	Jul	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
Flow (CFS)	12,932.5	6,435.5	6,210.5	7,607.0	8,969.2	10,194.7
Volume (AF)	793,794.9	395,009.0	368,901.8	466,915.7	532,768.6	625,748.7

30. Table 6 summarizes the existing legal demands on Flathead Lake to USGS gage #12372000. Department practice is to subtract existing legal demands for the affected reach from the water determined to be physically available within that reach. Lists of the existing water rights used to quantify the existing legal demands can be found in the water right file or provided upon request.

Table 6. Surface water physically available minus existing legal demands on Flathead Lake and Flathead River to USGS Gage #12372000

Month	Water Physically Available (CFS)	Existing Legal Demands (CFS)	Physically Available Water minus Legal Demands (CFS)	Physically Available Water minus Legal Demands (AF)
January	10,484.7	104.7	10,380.0	637,124.4
February	9,285.7	104.7	9,181.0	508,994.6
March	7,969.7	104.7	7,865.0	482,753.7
April	9,622.5	172.5	9,450.0	561,330.0
May	19,522.5	172.5	19,350.0	1,187,703.0
June	25,892.5	172.5	25,720.0	1,527,768.0
July	12,932.5	172.5	12,760.0	783,208.8
August	6,435.5	172.5	6,263.0	384,422.9
September	6,210.5	172.5	6,038.0	358,657.2
October	7,607.0	172.5	7,434.5	456,329.6
November	8,969.2	104.7	8,864.5	526,551.3
December	10,194.7	104.7	10,090.0	619,324.2

31. Confederated Salish & Kootenai Tribes owns the hydropower water rights for Salish-Kootenai Dam. The two claimed water rights for Salish-Kootenai Dam are for 14,540 CFS up to 614,200 AF for power generation, and a volume of 614,700 second foot days for storage for power generation which is equivalent to 1,217,106 AF. (A second foot day is the volume of water represented by a flow of 1 cubic foot per second for 24 hours. The term is used extensively as a unit of runoff volume or reservoir capacity.) The total volume from the two claimed rights is 614,200 AF plus 1,217,106 AF which equals 1,831,306 AF. Flathead Lake is

managed to keep a full pool of water during the late spring and summer months. At the claimed flow rate of 14,540 CFS flowing 24 hours per day, both of the claimed water rights, the direct flow hydropower right and storage for hydropower water right, can be fulfilled over a period of 64 days.

32. Salish-Kootenai Dam operations are complex and must accommodate many management factors including, but not limited to federal licensing (Flathead Lake levels required by FERC (Federal Energy Regulatory Commission)) for fish and recreation, instream flow requirements, flood control, and irrigation needs. These factors fluctuate seasonally and from year to year. The average yearly flow of water through Flathead Lake is approximately 11,437 CFS as measured at the USGS gauge at Polson (12372000), for the time period of 1939-2006 (USGS, 2009). Even though hydropower water rights at Salish-Kootenai Dam require 1,831,306 AF, to meet the hydropower water rights claimed in the adjudication, the records show that Salish-Kootenai Dam's reservoir, Flathead Lake, consistently obtains a full pool status each year.

33. Pending an adjudication of Confederated Salish & Kootenai Tribes hydropower water rights and completion of a water availability study that shows otherwise, the Department finds that water in Flathead River, Flathead Lake and the Stillwater River can reasonably be considered legally available during the period in which the Applicant seeks to appropriate. This finding is based on the information and on the records of the Department and other evidence provided to the Department.

34. The Department finds that the amount the Applicant seeks to appropriate is physically and legally available in the confined bedrock aquifer and that calculated depletions to surface water are legally available from the surface source.

CONCLUSIONS OF LAW

35. Pursuant to § 85-2-311(1)(a), MCA, an applicant must prove by a preponderance of the evidence that:

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department

and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; Montana Power Co., 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

36. It is the applicant's burden to present evidence to prove water can be reasonably considered legally available. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the applicant. The Supreme Court has instructed that those burdens are exacting.); see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054 (burden of proof on applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005))(it is the applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007)(permit denied for failure to prove legal availability); see also ARM 36.12.1705.

37. Pursuant to Montana Trout Unlimited v. DNRC, 2006 MT 72, 331 Mont. 483, 133 P.3d 224, the Department recognizes the connectivity between surface water and ground water and the effect of pre-stream capture on surface water. E.g., Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(mitigation of depletion required), *affirmed*, Faust v.

DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); see also Robert and Marlene Takle v. DNRC *et al.*, Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994) (affirming DNRC denial of Applications for Beneficial Water Use Permit Nos. 76691-76H, 72842-76H, 76692-76H and 76070-76H; underground tributary flow cannot be taken to the detriment of other appropriators including surface appropriators and ground water appropriators must prove unappropriated surface water, *citing* Smith v. Duff, 39 Mont. 382, 102 P. 984 (1909), and Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966)); *In the Matter of Beneficial Water Use Permit No. 80175-s76H by Tintzman* (DNRC Final Order 1993)(prior appropriators on a stream gain right to natural flows of all tributaries in so far as may be necessary to afford the amount of water to which they are entitled, *citing* Loyning v. Rankin (1946), 118 Mont. 235, 165 P.2d 1006; Granite Ditch Co. v. Anderson (1983), 204 Mont. 10, 662 P.2d 1312; Beaverhead Canal Co. v. Dillon Electric Light & Power Co. (1906), 34 Mont. 135, 85 P. 880); *In the Matter of Beneficial Water Use Permit No.* 63997-*42M by Joseph F. Crisafulli* (DNRC Final Order 1990)(since there is a relationship between surface flows and the ground water source proposed for appropriation, and since diversion by applicant's well appears to influence surface flows, the ranking of the proposed appropriation in priority must be as against all rights to surface water as well as against all groundwater rights in the drainage.) Because the applicant bears the burden of proof as to legal availability, the applicant must prove that the proposed appropriation will not result in prestream capture or induced infiltration and cannot limit its analysis to ground water.§ 85-2-311(a)(ii), MCA. Absent such proof, the applicant must analyze the legal availability of surface water in light of the proposed ground water appropriation. *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 By Utility Solutions LLC* (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 ; Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12.

38. Where a proposed ground water appropriation depletes surface water, applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on, and availability of, water in the surface water source. Robert and Marlene Takle v. DNRC *et al.*, Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994); *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(permits granted), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007*)*(permit granted), *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions LLC* (DNRC Final Order 2007) (permit denied for failure to analyze legal availability outside of irrigation season (where mitigation applied)); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009)(permit denied in part for failure to analyze legal availability for surface water depletion); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision,* (2011) Pg. 5 (Court affirmed denial of permit in part for failure to prove legal availability of stream depletion to slough and Beaverhead River); Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12 ("DNRC properly determined that Wesmont cannot be authorized to divert, either directly or indirectly, 205.09 acre-feet from the Bitterroot River without establishing that the water does not belong to a senior appropriator"; applicant failed to analyze legal availability of surface water where projected surface water depletion from groundwater pumping); *In the Matter of Application for Beneficial Water Use Permit No. 76D-30045578 by GBCI Other Real Estate, LLC* (DNRC Final Order 2011) (in an open basin, applicant for a new water right can show legal availability by using a mitigation/aquifer recharge

plan or by showing that any depletion to surface water by groundwater pumping will not take water already appropriated; development next to Lake Koocanusa will not take previously appropriated water). Applicant may use water right claims of potentially affected appropriators as a substitute for "historic beneficial use" in analyzing legal availability of surface water under § 85-2-360(5), MCA. Royston, supra.

39. Applicant has proven by a preponderance of the evidence that water can reasonably be considered legally available during the period in which the Applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. § 85-2-311(1)(a)(ii), MCA. (FOF 22-34)

Adverse Effect

FINDINGS OF FACT

40. The Applicant plans to regulate the volume of water diverted during times of water shortage. If call is made the Applicant will issue watering restrictions to water users in stages. If senior rights are still not getting water, the Applicant has the ability to stop pumping until water becomes available again.

41. To address potential adverse effect, Attila Folnagy, groundwater Hydrologist for the Water Management Bureau of the DNRC, modeled drawdown of the aquifer by the proposed pumping of the Applicant's well. The evaluation of drawdown in other wells was done using the Theis (1935) solution with the following inputs: T=16,740 ft^2/day, S=0.0008, and a monthly pumping schedule (table 7) that accounts for domestic and lawn & garden irrigation uses. Drawdown is the largest at the end of July during the fifth year of pumping. There are 0 water rights that are predicted to experience drawdown greater than 1 foot.

Table 7. Monthly pumping schedule for the proposed well

Month	IWR (inches)- Bigfork	Diversion (AF)	Diversion (GPM)
January	0.00	2.3	17.0
February	0.00	2.3	18.9

March	0.00	2.3	17.0
April	0.47	2.8	21.0
May	2.05	4.3	31.6
June	3.31	5.6	41.9
July	4.99	7.2	52.5
August	4.50	6.7	49.0
September	2.19	4.5	33.7
October	0.47	2.8	20.4
November	0.00	2.3	17.6
December	0.00	2.3	17.0
Total	**17.98**	**45.5**	

42. Depletion by pumping the aquifer primarily occurs through propagation of drawdown through the fractured bedrock aquifer and through or around the overlying confining unit to Flathead Lake. The Department's analysis of legal availability of water for the reach of the Flathead River consisting of Flathead Lake down to Salish-Kootenai Dam identifies that water can be considered legally available in the amount which will be depleted.

43. The Applicant will be subject to the following conditions, limitations, or restrictions on its permit:

WATER USE MEASUREMENT

FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE KALISPELL WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

44. The Department finds that there will be no adverse effect to existing water users due to the proposed appropriation. There are no water rights which have wells completed in the bedrock aquifer which will experience drawdown below the bottom of their perforations due to the Applicant's proposed pumping, and water is legally available in the reach of the Flathead River consisting of Flathead Lake down to Salish-Kootenai Dam in the amount which will be depleted.

CONCLUSIONS OF LAW

45. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. See Montana Power Co. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); Bostwick Properties, Inc. ¶ 21.

46. An applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. Id. ARM 36.12.120(8).

47. In regard to senior hydropower water rights, the facts in this application are distinguishable from those In the Matter of Application for Beneficial Water Use Permit No. 76N30010429 by Thompson River Lumber Co (2006) (TRLC) concerning the Avista Company's water rights for Noxon Reservoir. Thompson River Company's proposed diversion on the Clark Fork was surface water immediately upstream of Avista's Noxon Reservoir that had an immediate calculable adverse impact on Avista's water rights and power production. The

proposed appropriation in this case is a groundwater appropriation that depletes surface water more than 150 miles upstream of Noxon Reservoir and is located above Flathead Lake and Salish-Kootenai Dam, and below the inflows from the Bureau of Reclamation's Hungry Horse Dam.

48. Section §85-2-401, MCA, makes clear that an appropriator is not entitled under the prior appropriation doctrine to protect itself from all changes in condition of water occurrence. In this basin which is not closed to surface or ground water appropriations, priority of appropriation for a large hydropower right that may otherwise prohibit future upstream development in the basin, does not, pursuant to §85-2-401, MCA, include the right to prevent the decrease of streamflow or the lowering of a water table or water level if the prior appropriator can reasonably exercise their water right under the new conditions. Here, the Department finds that Avista's and Confederated Salish & Kootenai Tribe's prior appropriations in this basin, which has not been closed to appropriation by the Legislature, does not include the right to prevent this appropriation where Avista and Confederated Salish & Kootenai Tribes can reasonably exercise their hydropower water rights.

49. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 4.

50. In analyzing adverse effect to other appropriators, an applicant may use the water rights claims of potentially affected appropriators as evidence of their "historic beneficial use." See Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054.

51. It is the applicant's burden to produce the required evidence. E.g., Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (legislature has placed the burden of proof squarely on the applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). (DNRC Final Order 2005). The Department is required to grant a permit only if the § 85-

2-311, MCA, criteria are proven by the applicant by a preponderance of the evidence. Bostwick Properties, Inc. ¶ 21.

52. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pg. 8.

53. The Applicants have proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. § 85-2-311(1)(b) , MCA. (FOF 40-44)

Adequate Diversion

FINDINGS OF FACT

54. The Applicant proposes to divert 80 GPM up to 45.5 AF per year from a 291-foot-deep well located in the NWNWSW Section 21, Township 26N, Range 20W, Flathead County. The well was drilled by Liberty Drilling & Pump (WWC-52), a licensed well driller in the State of Montana. The well is completed in a confined bedrock aquifer.

55. The requested flow rate of 80 GPM is the maximum output of the well based on the pump installed. The pump installed is likely a 7.5 horsepower Goulds 80 GPM rated pump, which is set 240 feet bgs. The pump was installed in the early 2000's and the records are unclear; however, the pump test confirms the pump is capable of diverting 80 GPM. A 2-inch galvanized pipe conveys water from the well to six Well-X-Trol WX-302 pressure tanks. The system is set to kick the pump on when the pressure in the tanks hits 35 psi, and the pump turns off once tank pressure hits 60 psi. The water distribution system uses 4-inch PVC mains.

CONCLUSIONS OF LAW

56. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.

57. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.

58. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. § 85-2-311(1)(c), MCA. (FOF 54-55)

Beneficial Use

FINDINGS OF FACT

59. The Applicant is proposing to divert 80 GPM flow up to 45.5 AF per year for multiple domestic and lawn & garden irrigation uses. The multiple domestic requirement was calculated by the Applicant using DNRC standards for domestic use found on DNRC form 615 (1 AF/household), and multiplying it by the total number of houses the system is expected to serve (28) under the permit. The lawn & garden irrigation requirement was calculated by the Applicant using DNRC standards for lawn & garden irrigation use found on DNRC form 615 (2.5 AF/acre), and multiplying it by the total number of acres (7 acres) based on the Applicant's analysis identifying an average of 0.25 acres per lot served.

60. Multiple domestic and lawn & garden irrigation purposes are identified as beneficial uses of water in § 85-2-102(4)(a), MCA. The requested period of diversion is January 1-December 31; the proposed period of use for multiple domestic purposes is January 1-December 31, and the proposed period of use for lawn & garden irrigation is April 15-October 15, which follows the DNRC standard for period of use in climatic area 3. The flow rate of 80 GPM has been requested because that is the peak diversion rate of the well based on the current pump.

CONCLUSIONS OF LAW

61. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

62. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. E.g., McDonald, supra; Toohey v. Campbell (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right is limited to the amount of water necessary to sustain the beneficial use. E.g., Bitterroot River Protective Association v. Siebel, *Order on Petition for Judicial Review*, Cause No. BDV-2002-519, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds*, Dee Deaterly v. DNRC *et al*, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); Worden v. Alexander (1939), 108 Mont. 208, 90 P.2d 160; Allen v. Petrick (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

Amount of water to be diverted must be shown precisely. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 3 (citing BRPA v. Siebel, 2005 MT 60, and rejecting applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

63. Applicant proposes to use water for domestic use (which includes garden and landscaping irrigation, also commonly referred to as 'lawn and garden irrigation') which is a recognized beneficial use. § 85-2-102(4), MCA. "Domestic use" by DNRC rule means those water uses common to a household including: … (g) garden and landscaping irrigation up to five acres." ARM 36.12.101(23). Applicant has proven by preponderance of the evidence multiple domestic and lawn & garden irrigation are beneficial uses and that 45.5 AF of diverted volume and 80 GPM flow of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF 59-60)

Possessory Interest

FINDINGS OF FACT

64. This application is for instream flow, sale, rental, distribution, or is a municipal use application in which water is supplied to another. It is clear that the ultimate user will not accept the supply without consenting to the use of water. The Applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

CONCLUSIONS OF LAW

65. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

66. Pursuant to ARM 36.12.1802:

> (1) An applicant or a representative shall sign the application affidavit to affirm the following:
> (a) the statements on the application and all information submitted with the application are true and correct and
> (b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.
> (2) If a representative of the applicant signs the application form affidavit, the representative shall state the relationship of the representative to the applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

67. The Applicants have proven by a preponderance of the evidence that they have a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. § 85-2-311(1)(e), MCA. (FOF 64)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76LJ 30112899 should be GRANTED.

The Department determines the Applicant may divert groundwater by means of a 291-foot deep well in the NWNWSW Section 21, Township 26N, Range 20W, Flathead County, from January 1-December 31 at 80 GPM up to 45.5 AF, for multiple domestic use in 28 households from January 1-December 31, and lawn & garden irrigation of 7 acres from April 15-October 15. The place of use is a total of 28 lots (lots 1 through 27 and lot 1-HA) in the Chautauqua Terrace subdivision, located in the NWSW Section 21, Township 26N, Range 20W, Flathead County.

The application will be subject to the following conditions, limitations or restrictions.

WATER USE MEASUREMENT

FOR EACH WELL, THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE KALISPELL WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §§ 85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§ 85-2-307, and -308, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to an application are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the permit or change in appropriation right, the department will grant the permit or change subject to conditions necessary to satisfy applicable criteria.

DATED this 19th day of April, 2018

/Original signed by Kathy Olsen/
Kathy Olsen, Regional Manager
Kalispell Regional Office
Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 19th day of April, 2018, by first class United States mail.

CHAUTAUQUA TERRACE HOA
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HAFFERMAN ENGINEERING, INC.
%KURT HAFFERMAN
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/Original signed by Nathaniel T. Ward/ — NAME

4/19/2018 — DATE